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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT  
 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

TESLA, INC.

Defendant.

Case No.: 3:23-cv-04984-JSC

**THIRD UPDATED JOINT CASE  
 MANAGEMENT CONFERENCE  
 STATEMENT**

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Pursuant to the Court's Pretrial Order No. 1 (ECF 77), Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) and Defendant Tesla, Inc. (Tesla), (collectively, the parties), hereby submit the following Updated Joint Case Management Conference Statement (CMC Statement). In accordance with the Court's Civil Standing Order, this CMC Statement only addresses new issues. *See* ECF 65; Civil Standing Order at 2, Section E.

**1. Motions**

There are no pending motions, though the parties are continuing to meet and confer on the following issues, some of which may be submitted to the Court in Discovery Dispute Letters, summarized below in Section 2 (Pending Discovery Disputes).

**2. Pending Discovery Disputes**

**a. Supplemental ESI Protocol**

**1) EEOC's Update**

The EEOC has sought from Tesla its sources of ESI that it believes to be potentially relevant, the applicable date ranges for these sources, confirmation that Tesla has taken reasonable steps and other information that the District's guidance on ESI anticipates that the parties will meet and confer about. *See e.g.*, NDCA Guidelines for the Discovery of Electronically Stored Information (Updated December 1, 2015). This information is predicate to finalizing a 2<sup>nd</sup> ESI Protocol, as the EEOC explained in the parties' update on the status of the 2<sup>nd</sup> ESI Protocol. *See* ECF 76. Tesla eventually identified some ESI sources in late-December, which the parties met and conferred about on January 3. On January 6, the EEOC circulated a revised draft ESI Protocol and a separate letter (January 6 Letter) explaining the agency's revisions and inquiring about the sources of ESI that Tesla identified and other potential sources, as well as whether the data on these sources has been preserved. The EEOC awaits Tesla's reply and anticipates that the parties will need to meet next with their respective liaisons.

Besides identifying key ESI sources and confirming their preservation, the main remaining disputes concern:

- The parties' respective relevant date ranges for preserving ESI;
- The date each party's preservation obligation arose;

- Whether Tesla needs to preserve ESI contained in certain sources it describes as “legacy systems” for which it lacks a license or software to access and the identity of those sources;
- Whether the use of search terms to review data, such as emails, should be guided by specific timeframes for the exchange of proposed search terms, reports, counter-proposals, etc., and the information that the parties should disclose during technologically assisted reviews; and,
- The scope of any exclusions to the parties’ privilege logs.

As the parties are just now engaging in substantive conversations concerning the ESI sources Tesla identified last month, it is unclear to the EEOC which, of any, of the outstanding disputes will end up before the Court. Tesla’s response to the EEOC’s January 6 Letter, however, will help to clarify the breadth of any lingering disputes.

## 2) Tesla’s Update

Although Tesla highlighted to the EEOC the difficulty of providing a comprehensive list of relevant ESI sources without knowing the specifics of the EEOC’s forthcoming discovery requests, Tesla nonetheless worked diligently to identify potential sources of ESI that it deems relevant and to timely provide same to the EEOC as a basis for further discussion. On December 23, 2024, Tesla submitted its revisions to the Second ESI Protocol, which included its list of potentially relevant ESI sources. On January 3, 2025, the parties met and conferred, and the EEOC posed additional questions to Tesla that it requested Tesla address before the EEOC would agree to the Second ESI Protocol. Tesla requested that the EEOC submit these requests in writing, and the EEOC provided the requests 9:51 pm PT on January 6, 2025. Tesla is in the process of reviewing the EEOC’s requests in order to determine whether any additional responsive potential sources of ESI exist, and the preservation dates of same, and will provide an update to the EEOC regarding same. Tesla is committed to continued collaboration with the EEOC regarding the Second ESI Protocol and will provide prompt feedback to the EEOC’s correspondence received on January 6, 2025.

While the parties are still in negotiations over the Second ESI Protocol and several terms remain unresolved, Tesla looks forward to continuing to collaborate with the EEOC to reach an agreement and to minimize any outstanding disputes to be brought before the Court. Throughout the process, Tesla continues to emphasize to the EEOC that the parties could reach a temporary

1 agreement on protocol terms without prejudice, leaving room to address any future concerns the  
 2 parties may have regarding their respective relevant ESI source lists or their respective "legacy  
 3 systems."

4 **b. EEOC Interrogatory: Identifying Information Concerning Black Employees**  
 5 **(Employee List)**

6 1) EEOC's Update

7 On September 24, 2024, the EEOC issued an Interrogatory pursuant to Fed. R. Civ. P. 33, for  
 8 identifying information for Black employees at Tesla's Fremont Facility. On December 5, 2024,  
 9 Tesla produced names, dates of employment, last known home address, last known email address,  
 10 last known telephone number, last known job title, last known supervisor, last known job family, last  
 11 known job function, and separation reason (if applicable) its Black employees. Although the  
 12 Interrogatory also sought Social Security Numbers (last four digits) and birth dates for these  
 13 individuals, the EEOC agreed to relinquish its pursuit of this information without prejudice to seek it  
 14 later.

15 Therefore, the only remaining dispute is over outstanding information for an estimated 430  
 16 remaining employees. On January 3, Tesla committed to providing the outstanding information early  
 17 this week. Assuming Tesla does so, then this dispute will be at least temporarily resolved.

18 2) Tesla's Update

19 On January 6, 2025, Tesla produced a supplemental contact list which provided outstanding  
 20 information for the estimated 430 remaining employees. As such, this dispute is resolved for the  
 21 time being.

22 **c. EEOC Request for Production: Deposition transcripts in actions concerning**  
 23 **race harassment at Fremont Facility.**

24 1) EEOC's Update

25 On September 24, 2024, the EEOC issued a Request for Production for deposition transcripts  
 26 in any actions alleging harassment based on race (Black or African American) or retaliation at  
 27 Tesla's Fremont Facility. On January 3, Tesla committed to answering this week whether:

- 28 • Tesla will stand on objections to producing any deposition transcripts except for certain non-  
 confidential depositions taken in *Department of Fair Employment and Housing v. Tesla, Inc.*,

Alameda County Superior Court No. 22CV006830; and *Vaughn et al., v. Tesla, Inc., et al.*,  
 Alameda County Superior Court No. RG 17882082, and,

- Tesla has withheld any transcripts for non-confidential depositions taken in these cases.

Once the EEOC has Tesla's answers, the parties will proceed with preparing a discovery dispute letter regarding the remaining disputes.

2) Tesla's Update

The parties met and conferred on January 3, 2025, regarding the EEOC's additional questions about Tesla's production of deposition transcripts. Tesla is actively working to address these questions and expects to provide responses this week. To the extent that the parties cannot reach agreement regarding same, the parties will submit a discovery dispute letter for the Court's review.

**d. Tesla's Request for Production: EEOC Communications with plaintiffs in Department of Fair Employment and Housing v. Tesla, Inc., Alameda County Superior Court No. 22CV006830, and Vaughn, et al. v. Tesla, Inc., et al., Alameda County Superior Court No. RG 17882082**

1) Tesla's Update

On September 26, 2024, Tesla requested that the EEOC produce documents provided to it by the California Civil Rights Department ("CRD"), private plaintiffs' firms California Civil Rights Law Group and Bryan Schwartz Law, P.C., and/or any other non-party that the EEOC reviewed, relied upon, or otherwise referenced in its investigation and/or litigation of its claims against Tesla. See Tesla's First Requests for Production Nos. 12-15. This request encompasses all relevant communications, as per Tesla's definition of "Documents" contained in its First Set of Requests for Production of Documents.<sup>1</sup> During a meet and confer call on November 4, 2024, the EEOC referenced purported information that led Tesla to understand that the EEOC engaged in communications with non-parties to this litigation that were not produced in response to RFPs 12-15. As a result, on December 4, 2024, Tesla requested that the EEOC supplement its productions to include these additional communications, as well as any other responsive documents that had not yet

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<sup>1</sup> Tesla's Requests define documents as including "communications, electronic messages, text messages, e-mails, correspondence...any kind of records of meetings or conversations..."

1 been provided.

2 The parties met and conferred again regarding this request on January 3, 2025, and the EEOC  
3 agreed to provide a privilege log once the Second ESI Protocol is finalized. This log will help clarify  
4 the scope of the communications at issue and narrow any disputes over documents that have been  
5 withheld. To the extent that the parties cannot reach agreement regarding same following Tesla's  
6 review of the EEOC's privilege log, the parties will submit a discovery dispute letter for the Court's  
7 review.

8 2) EEOC's Update

9 The parties have been negotiating, through the 2<sup>nd</sup> ESI protocol, potential categories of  
10 communications and documents that need not be included on a privilege log. This, of course, needs  
11 to be finalized before either party can provide a privilege log, which Tesla has requested in  
12 connection with this dispute. The EEOC, and presumably Tesla also, is committed to promptly  
13 producing an initial privilege log once the 2<sup>nd</sup> ESI Protocol containing any privilege log exclusions  
14 has been finalized. Thereafter, the EEOC's log, which will include the subset of communications  
15 with plaintiffs' counsels in the aforementioned cases that Tesla seeks and which the EEOC asserts  
16 are protected from disclosure by the common interest doctrine, should inform the parties and Court  
17 on the scope of the communications at issue and hopefully narrow this dispute.

18 **e. Additional Information for Potentially Aggrieved Individuals.**

19 1) Tesla's Update

20 On December 4, 2024, Tesla requested identifying information about approximately 106  
21 individuals who have contacted the EEOC regarding this matter, whom Tesla has not yet been able  
22 to identify based on the limited information provided by the EEOC regarding these individuals. The  
23 EEOC represented to Tesla that it agreed to provide email addresses and/or phone numbers for each  
24 of the identified potentially aggrieved individuals. To the extent Tesla still cannot identify these  
25 individuals with the additional information, the parties will meet and confer further.

26 2) EEOC's Update

27 The EEOC will provide Tesla with email addresses and/or phone numbers for each of the  
28 potential aggrieved individuals Tesla has identified, by the end of January. To the extent Tesla later

requests additional information for some of these individuals, the parties can meet and confer further. The EEOC believes this issue can be resolved without additional Court guidance.

Dated: January 7, 2024

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### **LOCAL RULE 5-1(i)(3) ATTESTATION**

I, James H. Baker, am the ECF User whose ID and password are being used to file the Joint Case Management Conference Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest that Tyree P. Jones concurs in this filing.

Dated: January 7, 2024

/s/ James H. Baker

James H. Baker, Senior Trial Attorney